Supreme Court of the United States

No. 1239.

LOUIS PHILLIPS ET AL.,

PLAINTIFF IN ERROR,

vs.

THE MOUND CITY LAND & WATER ASSOCIATION.

In Error to the Supreme Court of the State of California.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO DISMISS.

STATEMENT.

The same questions are presented on the motion to dismiss as will be presented on the merits; and the consideration of the motion will, therefore, involve an examination of the whole record.

The suit in the lower Court was an action brought for the partition of two adjacent tracts of land in the County of Los Angeles, known respectively as the Rancho San Jose and San Jose Addition.

The former Rancho was granted on the 15th day of April, 1837, to Ygnacio Palomares and Ricardo Vejar, and the grant approved by the Departmental Assembly on the [illegible] day of the same month (folios 90-1, 100-2). The [illegible] possession was duly delivered on the third day of [illegible] 1837 (folios 94-96).

In the year 1839 one Luis Arenas presented a petition [illegible]

the governor stating in effect that upon the recommendation of the Governor he had been associated by Palomares and Vejar in the ownership of the Rancho San Jose, and that the Governor at the same time had promised to grant to the three an additional league of land (fols. 102–4); and upon a reference of the petition to Palomares and Vejar a statement was endorsed upon it by them to the same effect (fol. 104). The petitition prayed only for the additional league promised (fol. 103).

The order for the grant endorsed upon the *expediente*, (fol. 102), and the grant itself, (fol. 111), after reciting that the San Jose had been granted in 1837 to Palomares and Vejar, declares them and Arenas to be the owners of the San Jose, with the addition of one league. (*Sitio de ganado mayor.*)

Judicial possession of the new grant was duly given on the 7th day of May, 1840, (fols. 114–8.)

There was also granted to Arenas in 1841 the Rancho Azusa, adjoining the Addition to the San Jose, (fol. 119); but this is not involved in the present suit.

Prior to the year 1845 one Henry Dalton succeeded to the title of Arenas in the three Ranchos; and on the 16th day of November of that year he and Vejar presented their petition to the first Alcalde and Judge of First Instance, praying for a partition of the land owned by them jointly with Palomares. Due proceedings were had upon this petition, which resulted upon the 12th day of February, 1846, in a final partition of the two Ranchos between the parties interested, (fol. 132.)

The survey for the partition was made by Jasper O'Farrell, whose map is the map referred to in the subsequent proceedings for confirmation.

After the organization of the land commission petitions were filed by the three owners for the confirmation of their respective claims.

The petitions of Dalton and Vejar in effect asked for the

confirmation of the specific tracts allotted by them on the partition, (fols. 62 et seq. and 72 et seq.)

The petition of Palomares asked for the confirmation of an undivided third of the Rancho San Jose, with the Addition, (fol. 57, et seq.)

The decrees of the Land Commission confirmed to each respectively the lands allotted to them on the partition as described on the O'Farrell map, (fols. 63-4, 69, 70, 73-5).

On appeal to the District Court in Dalton's case, it was adjudged: "That the said decision of the said Board of Commissioners be, and the same hereby is affirmed, and it is further adjudged and decreed that the claim of the above named appellee is good and valid, and the same is hereby confirmed to him; the land of which confirmation is made being as follows: One equal undivided third part of the Rancho of San Jose granted by Juan B. Alvarado, Governor of California, to Ygnacio Palomares and Ricardo Vejar, on the 17th day of April, 1837, and re-granted by said Governor, Juan B. Alvarado, on the 14th day of March, 1840, to the said Palomares and Vejar, and to Luis Arenas, according to the boundaries described in the grant first mentioned, and the map to which the same refers, which boundaries more fully appear from the Act of Judicial Possession as follows: (Here follows the description given in the *testimonio* of possession,) also one undivided third part of the lands granted to Ygnacio Palomares, Ricardo Vejar and Luis Arenas in addition to the lands above described by Juan B. Alvarado, Governor of the Department of the Californias, according to the boundaries described in said grant and the map to which the grant refers, to the extent of *one* square league of land within the boundaries given in the Act of Judicial Possession, as follows, to-wit: (Here follows the boundaries given in the *testimonio* of Judicial Possession), fols. 65-6.

The decrees of the District Court in Palomares' case and Vejar's case were identical in substance and almost identical in language, (fols. 70-1, 75-6).

A patent was issued jointly to the three confirmees for the San Jose Rancho (fols. 61–80) and another for the Addition to San Jose (folios 81–2); both of which recite the above decrees at length.

The Mound City Land and Water Company, plaintiff in the original suit, is the successor in the title of Dalton.

The defendants, Palomares and Phillips, have respectively succeeded to the titles of Ygnacio Palomares and Vejar in the Rancho San Jose; but have never acquired their titles in the Rancho San Jose Addition; which are still vested in their heirs, who are not parties to the suit.

The decree of the Court below annulled the former partition and adjudged the three parties named to be the owners as tenants in common of the two Ranchos; and this decree was affirmed by the Supreme Court of California.

THE CASE OF THE PLAINTIFF IN ERROR.

The case of the plaintiff in error rests upon the following propositions:

1st. The partition made by the Mexican authorities in 1846 was valid, and vested in the parties interested the title to the specific tracts respectively allotted to them.

2d. These titles were confirmed by the treaty, by the Act of March 3d, 1851, and by the decrees of confirmation and the patents issued under that Act.

3d. Consequently, the case comes within the provision of § 709 of the Revised Statutes, that "A final judgment or decree in any suit in the highest court of a State, in which a decision in the suit could be had, * * * where any right, title, privilege or immunity is claimed under the constitution, or any treaty or statute of or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority, may be re-examined and re-

under the provisions of § 2, Art III, of the Constitution, that "the judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

These propositions will be discussed in the order stated.

ARGUMENT.

I.

As to the Validity of the Partition of 1846.

We might perhaps safely assume, for the purposes of this motion, that the partition of 1846 will not be drawn in question; as it is not probable that the Court will think it necessary to go fully into the investigation of the point at this stage of the case; (Semple vs. Hagar, 4 Wall. 433). But to anticipate any possible view of the case that may be taken, we will briefly discuss it.

The proceeding for partition was commenced by Dalton and Vejar in 1845, before Sanchez, first Alcalde and Judge of the First Instance, and was continued, and concluded, the following year before his successor, Gallardo, (fols. [illegible] et seq.) Notice was duly given to Palomares, and to [illegible] Contestor, (fols. 124, 126); a regular surveyor, selected by the parties, was employed, (fols. 126-7), and he and his chain-bearers, duly sworn; and in fine the proceedings appear to have been regular in every particular.

The Court of First Instance was a Court of general jurisdiction, (Escriche—Mexican edition—word "Juzgado"), with "(with certain exceptions, immaterial to the present case) vested by express provision of the law, with jurisdiction of "all suits and causes, civil or criminal, of whatever class or nature they may be," (Id. word "Juez Civil," Art. 89 of "the law of the 23d of May, 1837, upon the administration of justice"), and consequently with jurisdiction of actions for partition; which were recognized actions and

the Mexican law; (Id. words "Particion," "Juicio Divisorio," "Communero.")

The case therefore not only comes within the presumption "that the public acts of public officers purporting to be exercised in an official capacity and by public authority, shall not be presumed to be an usurped, but a legitimate authority, previously given or subsequently ratified" (U. S. vs. Arredondo, 6 Peters, 727; U. S. vs. Delassus, 9 Id. 134; Strother vs. Lucas, 12 Id. 410; U. S. vs. Peralta, 19 How., 347); but also within the universal principle that where power or jurisdiction is delegated to any officer or tribunal over a subject-matter, the acts of such officer or tribunal are binding and valid, and cannot be attacked collaterally (U. S. vs. Arredondo, 6 Pet. 729.)

The objections made to the partition by the Supreme Court of California are, we respectfully submit, obviously untenable. Its decision, if we understand it correctly, rests upon the proposition "that in the proceeding before him, (for the partition) the judge of first instance undertook to perform the task reserved to the political department of the government, to-wit: the task of fixing definitely and finally the boundaries of the land granted"; and that "neither (he), nor the parties in interest could then know, where, within the exterior limits, the government would select the specific tract in and to which their complete title would ultimately vest" (64 Cal. 494, 495).

It would seem to be a sufficient answer to this proposition to say that it is in fact untrue. For, in the first place, the political department upon the issue of the grants did not reserve to itself the task of fixing definitely and finally the boundaries of the land granted, but by express provisions in the grants delegated this task to the proper Judge, and directed the parties to apply to him for the delivery of the juridical possession, (fols. 90, 112, 118 et seq.); and in the second place the juridical possession of both grants was in fact delivered before the proceedings for partition commenced, as

fully appears from the records of the delivery of [illegible] sion appearing in the Transcript. (folio 99 et seq.) [illegible] The power to segregate the land and to define and establish the boundaries had therefore become a judicial power and had been exercised before the partition, and the boundaries established by the proper judicial proceeding, the delivery of the juridical possession.

"By this proceeding the land granted was segregated from the public domain, and what was previously a grant of quantity became a grant of a specific tract." (Grubbs vs. U. S., 2 Well., 261.)

"This proceeding involved an ascertainment and establishment of the boundaries of the land granted by the [illegible] the officers of the government, specially designated for the purpose, and has all the force and efficacy of a judicial determination. It bound the former government and is equally binding upon the officers of our government. [illegible] purport of the recent case of Grubbs vs. U. S. [illegible] the survey made by the Surveyor General of the grant confirmed did not conform to the [illegible] shown by the record of Juridical Possession, and the Court for that reason set the survey aside and ordered a survey, which should correspond with the [illegible] holding that the action of the officers of the [illegible] made upon the delivery of juridical possession [illegible] reparable injustice to any other interest. In that decision, this Court expressed its concurrence [illegible] of the District Court, and held that a [illegible] character were [illegible] the officers of the United States in the survey of land claimed under a confirmed [illegible] In other words, the case decided that the [illegible] was conclusive as to the boundaries and [illegible] granted."

United States vs. Pico, 2 Well., 569.
See also Lucas vs. Clark, 37 Cal. 274.
Waterman vs. Smith, 13 Cal., 410-11.
Thornton vs. Grow, 24 Cal., 335.

The California Court, however, held it altogether immaterial whether there had, or had not, been a delivery, of juridical possession prior to the partition; and rested its decision exclusively upon the broad proposition that "whatever the nature of the grant or grants, the petitioners to the board of land commissioners submitted themselves to the jurisdiction of the tribunals created by the Act of 1851, for the ascertainment of the rights protected by the treaty; and the patent they obtained *is a solemn record of an adjudication, binding upon them, that the lands granted were never finally segregated from the public lands by the Mexican government*" Hence, the conclusion reached is that "until final survey *by the United States* of the "San Jose" and its "Addition," there was no specific tract to which attached a complete proprietorship in favor of the grantees," or which could be the subject of a partition. (Id. 496–7).

The decision, therefore, seems to go to the full extent of holding that all partitions of Mexican grants made by the Mexican Courts—whether the grants were perfect or imperfect, whether for specific tracts or for quantity only, or whether defined by delivery of juridical possession or otherwise—were necessarily void; and the reason given by the Court for its conclusion,—viz: "that the judgment in partition * * * could not anticipate the action of the political power (i. e., of the United States,) and divide in advance the lands which should subsequently be surveyed" (opinion p. 495)—is equally applicable to all such cases.

This conclusion, however, rests upon a misapprehension of the nature and effect of the proceedings for confirmation under the Act of 1851. Rights of property acquired under the Mexican laws were not affected by the Conquest, and our government never had or claimed any right, either wholly to confiscate such property, or do so partially by altering boundaries established and defined under the Mexican law. It had indeed the power to establish the boundaries of a grant where the juridical possession had not been delivered; for under the Mexican law, and

In such a case, as in all other cases where one

ties is evicted from his allotment, or from part of it, he will have the right to be compensated by the other parties, (Freeman on Cotenancy and Partition § 533; Sawyers vs. Cator, 8 Humphreys, 256; Rawle on Cov. of Title (4th Ed.) 473, 478); and even this right is confined to the original parties and does not pass to an alienee—(Sawyers vs. Cator, cited *supra*; see, also, 1 Washb. on R. P., 590 (432)—who, however, seems to have overlooked the distinction between the original proceeding for partition between co-parceners, and that afterwards provided for joint-tenants and tenants in common.) But the partition is not rendered invalid; nor can it be collaterally attacked. For in this, as in all other cases, the judgment of a court of competent jurisdiction, until reversed or set aside, is binding and conclusive upon the parties.

II.

As to the effect of the Confirmation by the United States District Court, and the Patent issued thereon.

It will be remembered that a separate petition was presented to the Commission by each of the parties—two of them asking for the confirmation respectively of the allotments under the partition; the other—that of Palomares—asking for the confirmation of an undivded one-third of the two Ranchos; and that the decrees of the land commission in each case confirmed to the petitioner the land alloted to him under the partition.

Had there been a single proceeding to which all the petitioners were parties, and in which the question as to the validity of the partition could properly have been adjudicated these decrees would have been correct in every particular; but as there was no proceeding pending in which that question could be determined with justice to the parties, it was, perhaps, erroneous for the commission to enter a decree which in effect determined the question, and finally adjudicated that the partition was valid. For while technically neither party was concluded by the decrees in the

issued in confirmation of a Mexican grant, enures to the benefit of, and the legal title vests in the grantees of the confirmee by grants prior to the confirmation.

Steinbach vs. Stewart, 11 Wal., 574-5.
U. S. vs. Sutter, 21 How., 182,
And cases cited.

Hence, assuming the partition of 1846 to have been valid, (which we have abundantly shown was the case,) the effect of the decrees of confirmation of the District Court, and of the patents issued thereon, was to confirm to the patentees respectively the specific tracts of land allotted to them by the partition, and to vest in them the legal title thereof.

III.

As to the Question of Jurisdiction.

The title of the plaintiff rests directly for its validity upon the treaty, the legislation of Congress to carry it's treaty obligations into effect, and the confirmation and patent thereunder. It therefore comes directly under the provision of §709 of the Revised Statutes that a final judgment or decree of the highest Court of a State may be reviewed by this Court, "Where any right, title or immunity is claimed under * * * any treaty or Statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege or immunity (thus) specially set up or claimed."

Hickie vs. Starke, 1 Peters, 97.
Matthews vs. Zane, 4 Cranch, 382.
Henderson vs. Tinnessee, 10 How., 32s.
Derthold vs. McDonald, 22 How., 334.

None of the cases cited by counsel for defendant in error have any tendency to contravene this proposition; but on the contrary, several of them strongly support it.

In Owens vs. Norwood, (5 Cranch, 344,) the plaintiff in error, defendant below in an action of ejectment, had set up an outstanding title in a British subject, which he claimed was protected by a treaty. The Court held that it had no jur-

Court decided, an interest [illegible] the treaty (in question) expressly averred that no right had been obtained."

In Kennedy vs. Hunt (7 How., 586) the controversy was between a Spanish grant to Forbes & Co. (confirming and augmenting a previous grant) and a grant to one Price (Kennedy's grantor) afterwards confirmed and patented. The former the Court expressly held "was a perfect title" and one which did not "require any further step to perfect its boundary,"—(7 How., pp. 591-2). The two grants were adjacent and fronted on the river Mobile. The land in controversy was a piece of ground covered with water on Mobile river, which was included in the former grant, and which was claimed by the defendant in error, not on the ground that the land was within his grant, but on the ground that he was "entitled to claim a riparian right to the channel of the river according to lines drawn at right angles to the front line, and from each terminus thereof, unless some other claim (should) interfere, and it (was) insisted that the addition made to Forbes & Co's grant in 1807 (could not) hinder the assertion of Kenedy's right, because the addition was made after Spanish authority ceased, and for so much the grant of 1807 (was) void, and being out of the way Forbes & Co. (could) only claim, as front proprietor's riparian rights, in like manner that Kennedy himself (claimed.)" It was further claimed—the lines of the two grants crossing each other—that the land included between them "should be divided between the two grants, but in what proportions" was not stated. (Id., 593.)

The whole controversy turned upon the location of the Forbes & Co. grant—a perfect title with which the Government had never been concerned—and the decision was in its favor. "The controversy respecting the alluvion drew in question no Act of Congress, nor any authority exercised under the Constitution or laws of the United States, and therefore the decision of the State Court could not be opposed either to the laws or to any authority exercised under the

said company as a just claim on the Mexican Government. The validity of the award, or the treaty under which it was made (was) not called in question by either party as both (claimed) under them."

In the quotation from the opinion in this case the counsel omit a very important passage which materially qualifies the portion that is given. We quote the whole passage, italicizing the portion omitted. The Court says, by way of illustration: "If A. hold land under a patent from the United States, or a Spanish grant ratified by treaty, and his heirs, devisees, or assignees dispute as to who has the best title under him, this does not make a case for the jurisdiction of this Court under the 25th section of the Judiciary Act. *If neither the validity or construction of the patent or title under the treaty is contested, if both parties claim under it, and the contest arises from some question without or de hors the patent or the treaty, it is plainly no case for our interference under this section*" (p. 546-7).

In Semple vs. Hagar (4 Wall. 431), which was a suit to vacate a patent, the State Court refused to take jurisdiction of the case, and this Court held that it had no jurisdiction on that ground.

In Romie vs. Cassanova (91 U. S., 370), which was an action of ejectment brought by a party claiming under the City of San Jose by a grant made subsequent to the acquisition of California the only Mexican title involved was that of the defendant, which was held valid (91 U. S., 379; 45 Cal. 131).

The case of McStay vs. Freidman (92 U. S., 723), was similar in character.

In the case of Roth vs. Ehrman (107 U. S., 319) obviously has no application.

The case of San Francisco vs. Scott (111 U. S. 768) the title involved was a pueblo grant made subsequent to the

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Supreme Court of the United States.

October Term 1886.—No. ~~1288.~~ 819

PHILLIPS ET AL.

vs.

MOUND CITY LAND AND WATER ASSOCIATION.

Points Submitted by Mr. Edmunds, of Counsel for Plaintiffs in Error, against the Motion to Dismiss Filed by the Defendant in Error.

The brief of my associate, Mr. Smith, is so complete that I only wish to add one or two considerations.

I.

The fifteenth section of the act of 3d of March, 1851, providing for settling land claims in California, is as follows:

"That the final decrees rendered by the said commissioners or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and said claimants only, and shall not affect the interests of third persons."

The effect, therefore, of the confirmation of the Mexican grant in respect of which the question arises, was simply to show that the United States recognized the Mexican grant and to leave the rights of the parties under it precisely as

they were before. The land commissioners had no power under the law to determine whether the title should be confirmed in severalty or in common, and their confirmation had no effect upon the decree of the Mexican court making partition between the original grantees. Now, in this case, the plaintiffs claim a title in severalty derived by a judgment of the Mexican court before the cession, while the defendants claim against that separate title, and claim a common ownership in the land thus exclusively claimed by the plaintiffs, on the ground that the foreign decree was in some way invalid or inoperative; so that on one side the claim is of a title derived directly from the foreign decree, and on the other a claim against that title. The parties, therefore, do not recognize a common source of title derived from the foreign Government. This case, then, is distinguishable, it is thought, from all those cited in the brief of the other side.

The treaty provided for the security and recognition and protection of existing titles to property. The title in severalty of the plaintiffs in error to the land in question had been established pursuant to Mexican law, and that title it is the duty of the tribunals of the United States to protect when it is assailed. The question, therefore, is not one of the construction of a decree as between two parties, each of whom claims under it, but it is the question of the right of one party claiming against it to overthrow it, and thus destroy the plaintiffs' title arising under it. This, it is submitted, is clearly a question that belongs to this court.

Whether the decree of partition can be maintained, I do not now go into at all, as that question will arise on the merits.

Respectfully submitted.

GEO. F. EDMUNDS.

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Supreme Court of the United States.

OCTOBER TERM, 1886.

LOUIS PHILLIPS ET AL.,
Plaintiffs in Error,
v.
THE MOUND CITY LAND AND WATER ASSOCIATION ET AL.
} *No.* 819.

Brief of Defendants in Error on Motion to Dismiss for Want of Jurisdiction.

A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Attorneys for Defendants.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1886.

Supreme Court of the United States.

OCTOBER TERM, 1886.

LOUIS PHILLIPS ET AL.,
PLAINTIFFS IN ERROR,

v.

THE MOUND CITY LAND AND WATER ASSOCIATION ET AL.

No. 819.

And now come the said defendants and move the Court to dismiss this cause for want of jurisdiction, by reason of no Federal question being involved in the case.

A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Attys. for Defts.

Supreme Court of the United States.

OCTOBER TERM, 1886.

LOUIS PHILLIPS ET AL.,
PLAINTIFFS IN ERROR,

v. } *No.* 819.

THE MOUND CITY LAND AND WATER ASSOCIATION ET AL.

Brief of defendants in error on motion to dismiss for want of jurisdiction.

THE CASE.

This suit was brought September 4, 1882, in the Supreme Court of Los Angeles county, California, by the Mound City Land and Water Association, a corporation, and the Los Angeles County Bank, a corporation, as plaintiffs against Louis Phillips, Trinidad Yorba Francisco Palomares, and Henry Dalton, as defendants. The object of the suit was to make partition of the ranchos San José and San José addition in the said Los Angeles county.

The complaint alleged that the said Mound City Land and Water Association was the owner of one undivided third of said ranchos; that patents had been duly issued by the United States for the said ranchos to Henry Dalton, Ygnacio Palomares, and Louis Phillips, conveying

to each of them one undivided third of the same; that the Mound City Land and Water Company had acquired title to the interest of the said Dalton; that Trinidad Yorba had acquired title to the interest of the said Palomares; and that the said Phillips was the owner of the other undivided third; that the said Mound City Company had mortgaged its interest to the said Los Angeles County Bank. It prayed for a partition and for other proper relief.

The defendants, Phillips and Palomares, filed separate answers and cross-bills, setting up, in substance, the same matters of defence and grounds for relief.

So far as the present motion is concerned, it is only necessary to refer to that portion of their answers and cross-bills which include the Federal question, if there be any such question in the case.

They alleged that juridical possession was given to the former owners of said ranchos, under whom they claim, and that thereafter they proceeded to make partition of the same by filing a petition for partition in the court of first instance of the city of Los Angeles; and that the said court, on the 15th of February, 1846, by its decree, set apart in severalty the share of each owner in said ranchos, (all of which was done before a change of flag,) and that they and their grantees have continued to recognize said boundaries as binding upon them.

The said Phillips alleged that the conduct of the owner from whom he purchased was such as to estop him by matters in part from setting up any claim to the tract claimed by him.

They set out the proceedings, under the act of 1851, before the Commissioners and in the District Court, which finally resulted in the issuance of the patents, giving to the grantees hereinbefore named each one undivided third

of both said ranchos. A copy of one of the patents is set forth in the Record, pages 27–35.

The answer of Phillips admitted that the United States patent included $632\frac{93}{100}$ acres not included in the land partitioned by the decree of the court of first instance. (Record, p. 12.)

And the proof showed that more than 10,000 acres of the lands included in the tracts partitioned were excluded from the lands patented by the United States. The defendants, in their cross-petitions, prayed that the plaintiffs might be decreed to be trustees, holding the legal title in the undivided thirds of the tracts partitioned for their benefit, and that they might be required to convey the same to them.

The Superior Court of Los Angeles gave judgment for plaintiffs below, and the Supreme Court of California affirmed that judgment. This is a writ of error to reverse that judgment of the Supreme Court.

ARGUMENT.

We maintain that there is no Federal question in the case, and therefore that the motion to dismiss for want of jurisdiction should be granted.

Sec. 709, Revised Statutes, provides that "a final judgment or decree, in any suit in the highest court of a "State, in which a decision in the suit could be had, where "is drawn in question the validity of a treaty, or Statute "of, or an authority exercised under, the United States, and "the decision is against their validity, * * * may be "re-examined and reversed or affirmed in the Supreme "Court upon a writ of error."

This provision is substantially identical with that in the 25th section of the judiciary act of 1789, and the 2d section of the act of February 14, 1867.

In this case the validity of no treaty was drawn in question; the validity of no statute of the United States was drawn in question, and there was no authority exercised under the United States, and therefore it could not be drawn in question.

The parties all claimed under *patents from the United States which were admitted to be valid.* The only controversy was as to the construction that should be given to the patents, and whether patents, under which all parties claimed, which expressly stated that each grantee should have and hold one undivided third, should be construed to grant, not an undivided third to each, but the *entire estate* of certain tracts to each.

That does not present a federal question. It does present a question for the State courts to decide, and such is the doctrine of this Court established by numerous decisions, running back to its earliest history.

Owings *v.* Norwood's Lessee, 5 Cranch, 344.
New Orleans *v.* Armas, 9 Pet., 224.
Choteau *v.* Marguerite, 12 Pet., 507.
Maney *v.* Porter, 4 How., 55.

The case of Kennedy *v.* Hunt (7 How., 586) was in its essential features much like the present. A grant had been obtained from the Spanish government in 1807, in part confirmation of a concession granted in 1796, for certain land adjacent to the town of Mobile, in West Florida. This grant included the land between the then bank of the river and the high-water mark of 1802. An act of Congress of March 2, 1829, confirmed an incomplete Spanish concession which was alleged to draw after it, as a consequence, certain riparian rights conflicting with those claimed under the grant of 1807.

The Supreme Court of Alabama gave the lands covered

by these riparian rights to the claimants under the grant of 1807. This Court held that the decision of the State court was only a construction of a perfected Spanish title and could not be reviewed in this Court, and that no treaty or act of Congress was drawn in question, or any authority exercised under the Constitution or laws of the United States.

The case of Doe *v.* Eslava (9 How., 421) is in point. In that case there were two conflicting claims to land in Louisiana: one founded upon a French grant of 1757, with possession continuing down to 1787; the other founded upon a Spanish grant in 1788, with possession down to 1819. Both claims were confirmed by Congress. The Supreme Court of Alabama gave judgment in favor of the claimant under the Spanish grant. This Court held that it had no jurisdiction to review that judgment. Mr. Justice Woodbury, in delivering the opinion of the Court, after giving a history of the case, said: "The principles " of law applicable to these possessions, as existing in " Alabama, and as to land held under ancient French " and Spanish permits and grants, we do not propose to " consider; nor to revise the correctness of the rulings of " the State court concerning them, because they are mat- " ters clearly within their *sole* jurisdiction."

And again: "Some questions arose at the trial concern- " ing the construction of deeds and other conveyances. " In both lines of title, buildings only are in some in- " stances nominally conveyed, and not in terms the lots " on which they were situated; in both, too, some of the " boundaries are unsettled, and the quantity of land in " dispute by the papers is viewed differently. But such " questions as these are subordinate to the question of " title, and proper for the consideration of the State court " in exercising its appropriate jurisdiction over local ques-

" tions, and hence not subject to our revision. (13 Peters,
" 439; United States *v.* King, 3 Howard, 773.")

In Gill *v.* Oliver (11 How., 529) the facts were these: In 1839 a treaty was made between the United States and Mexico, providing for the " adjustment of claims of citizens " of the United States on the Mexican Republic." Under this treaty a sum of money was awarded to be paid to the members of the Baltimore Mexican Company who had subscribed money to fit out an expedition against Mexico under General Mina in 1816. The proceeds of one of the shares of this company were claimed by two parties, one as being the permanent trustee of the insolvent owner of the share, and the other as being the assignee of the provisional trustee, and afterwards the assignee of the insolvent himself.

The Court of Appeals of Maryland gave the fund to the latter, and this Court refused to review the case.

Mr. Justice Greer, in delivering the judgment of the Court, said: " The treaty and award are facts in that history. " They were before the Court but as facts, and not for con- " struction. If A hold land under a patent from the United " States, or a Spanish grant ratified by treaty, and his heirs, " devisees, or assignees dispute as to which has the best " title under him, this does not make a case for the juris- " diction of this Court under the twenty-fifth section of the " judiciary act. * * * In deciding this question, the " courts of Maryland have put no construction on the treaty " or award, asserted by one party to be the true one, and de- " nied by the other party. It was before them as a fact " only, and for the purpose of construction. * * * It " is a conclusive test of the question of jurisdiction of this " Court in the present case, that if we assume jurisdiction " and proceed to consider the merits of the case, we find " it to involve no question either of validity or construction " of treaties or statutes of the United States."

In Semple *v.* Hagar, (4 Wall., 431,) this Court held that it had no jurisdiction to review the judgment of the Supreme Court of California. The facts were as follows: Both parties held patents of the United States under Mexican grants, both of which included the same lands in part. One of the parties brought a suit in the State court to vacate the patent of the other to the extent of the conflict of title. The State Court refused to entertain jurisdiction of the question, and dismissed the complaint. This Court dismissed the case on motion for want of jurisdiction.

We desire to call special attention to the late case of Romie *v.* Casanova, (91 U. S., 379.) The action was ejectment, brought in one of the California district courts. The land in controversy was a part of the Pueblo of San José, and was granted under the Spanish government and finally confirmed by the courts and authorities of the United States. Both parties claimed under the same grantor. The Supreme Court of California affirmed the judgment of the District Court. A writ of error was brought to this Court. The Chief-Justice delivered the opinion of the Court and said:

"No Federal question is presented by the record in this "case. The action was brought to recover possession of "certain lands. Both parties claimed title from the city "of San José; and the question to be determined was, "which of the two had actually obtained a grant of the "particular premises in controversy. The title of the city "was not drawn in question. Even if it depended upon "the treaty of Guadaloupe Hidalgo and the several acts "of Congress to ascertain and settle private land claims "in California, the case would not be different. Both "parties admit that title, and their litigation extends only "*to the determination of the rights which they have severally* "*acquired under it. The writ is dismissed.*"

To the same effect is the case of McStay *v.* Freedman, (92 U. S., 723,) which was an action of ejectment to recover possession of a certain parcel of the Pueblo lands confirmed to the city of San Francisco by act of Congress. The plaintiff did not attempt to connect himself with the city title, but relied entirely upon his alleged possession and that of his grantors. The defendant claimed under the city title and act of Congress, and under the city ordinance and an act of the Legislature of California.

The Chief-Justice delivered the opinion of the Court. He said: "No Federal question was involved in the de-"cision of the Supreme Court. The city title was not "drawn in question. The real controversy was as to the "transfer of that title to the plaintiffs in error; and this "did not depend upon the 'Constitution or any treaty "'or statute of or commission held or authority ex-"'ercised under, the United States.' The case is, therefore, "in all essential particulars, like that of Romie et al. *v.* "Casanova, (91 U. S., 379;) and the writ must be dis-"missed for want of jurisdiction."

In Roth *v.* Ehrnan (107 U. S., 319) the question related to the validity of a decree of a foreign court annulling a marriage. The Supreme Court of Illinois held that the decree was valid. This Court dismissed the case for want of jurisdiction.

In City and County of San Francisco *v.* Scott, (111 U. S., 768,) this Court held that the decision of the State courts of California upon the question whether an Alcalde in San Francisco, after the conquest and before the incorporation of San Francisco, and before the adoption of a State constitution by California, could make a valid grant of Pueblo lands, presented no Federal question and was not reviewable in this Court.

The Chief-Justice said: "There is no Federal ques-

" tion in this case. The right of San Francisco under the " treaty of Guadaloupe Hidalgo to the lands in dispute is " not denied. Precisely what that right was may not be " easy to state. * * * The only controversy in this " case is as to the effect of the Alcalde grant of the Pueblo " title; and the precise question was, ' whether after the " ' conquest, * * * and before the incorporation of " ' the city of San Francisco, and before the adoption of " ' the Constitution of the State of California, a person " ' exercising the functions of an Alcalde of the Pueblo " ' of San Francisco, * * * could make a valid grant " ' of Pueblo lands as such officers had been before such " ' conquest accustomed to do,' and, if so, what would be " the effect of such a grant? This does not depend on " any legislation of Congress, or on the terms of the treaty, " but on the effect of the conquest upon the powers of local " government in the Pueblo under the Mexican laws. " That is a question of general public law, as to which the " decisions of the State courts are not reviewable here. " This has been many times decided. Delmus *v.* Insur- " ance Company, (14 Wall., 661;) Tarver *v.* Keach, (15 " Wall., 67;) New York Life Insurance Company *v.* Hen- " dren,(92 U. S., 286;) Dugger *v.* Bocock, (104 U. S., " 596;) Allen *v.* McVeigh, (107 U. S., 433.) "

See, also, Hastings *v.* Jackson, (112 U. S., 233,) where it was held that this Court had no jurisdiction to review the judgment of a State court upon adverse claims to real estate under a common grantor whose title was derived from the United States, and was not in dispute.

The State of California sought to set aside a patent which it had issued to the defendant for a tract of land granted to the State under an act of Congress. The Chief-Justice delivered the opinion of the Court and said: " The " first question which presents itself on this record is as

" to our jurisdiction. The suit, although in form by the " State to cancel its patent to Jackson, was, in reality, be- " tween Hastings and Jackson to determine which of the " two had in equity the better right to the land in contro- " versy by reason of the locations of school warrants " under which they respectively claim. There was no " dispute about the grant from the United States to the " State. That was conceded, and both parties claimed " under it. The controversy related only to the alleged " conflicting grants from the State. * * * Both par- " ties thus claimed under the State, and neither asserted " title from the United States except through the State."

In the case now under consideration, this Court will not fail to notice that there is no controversy about the Mexican grants. They are conceded to have been valid by all parties. There is no controversy about the patents from the United States. They are admitted by all parties to have been valid. There is no statute of the United States in controversy. There is absolutely no controversy about anything except as to the division of the patented lands among the present owners. Shall a partition of those lands be made in accordance with the terms of the patents or in accordance with an alleged division made by a tribunal, a foreign tribunal, before even any survey had been made which would bind this Government, and which division did not include *all* of the lands granted by the patents, and did include *thousands of acres of the public lands of the United States*?

In the light of the authorities already cited, it is apparent that that question is one for the determination of the State courts. It is a question of the rights of the respective parties under the patents. If it were properly before this Court upon our motion, (which it is not,) it is very clear to our minds that the grantees, *who have accepted a*

patent, and all who claim *under them*, would be estopped from asserting any other or different estate from that given by the patent.

We ask that the motion to dismiss for want of jurisdiction be granted.

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A. B. BROWNE,
W. H. SMITH,
Attys. for Defts.

124-605

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

PHILLIPS ET AL.

v.

MOUND CITY LAND AND WATER ASSOCIATION ET AL.

No. 819.

Reply to Briefs for Defendants in Error on Motion to Dismiss.

Mr. Edmunds, in his brief, makes but a single point and that is, that, under the 15th section of the act of March 3d, 1851, it is expressly provided that the final decrees and the patent issued under that act "shall be conclusive, between "the United States and said claimants only, and shall not "affect the interests of third persons."

We fully subscribe to the construction which makes the patent conclusive between the United States and the claimants, and leaves the interests of third persons unaffected, but we fail to see how that doctrine helps the gentleman's clients, for they are all of them either *claimants* themselves or *grantees of claimants*, and claiming under them and are in no sense "*third persons.*" They are privies in estate, and bound by the patent just as the patentees are bound. As to them the patent is "*conclusive*" in all its provisions; that which relates to the estate granted as well as that which relates to the boundaries.

We thank the learned counsel for his reference to the act of '51.

The argument of Mr. Smith singularly misapprehends the effect of the proceeding under the act of 1851, and the relevancy of the authorities cited by us.

Contending that the act of 1851 embraced all titles, complete or inchoate, and claiming for all the protection of the treaty of Gaudalupe Hidalgo, as presenting in every case, where litigated *inter sese*, a question for decision in the Federal courts, the gentleman seeks to dissipate the force of these authorities by insisting that they involved perfect grants under the former sovereign which neither required nor received confirmation by or under statutory authority from the United States. To this the answer is obvious: that in all such treaties whereby the sovereignty of the soil was transferred to this Government there was the same guarantee as to the recognition of property rights, complete or inchoate, then existing under the former Government. And to admit that in all cases of *perfect* titles, disputes *inter sese* were *not* cognizable in Federal courts, and yet insist that inchoate titles were so cognizable because made complete by Federal legislation is a manifest solecism. In effect it creates a distinction between complete and inchoate titles in this: that whilst both depend for their recognition upon the treaties, a perfect title thereunder requiring no Federal action involves in actions between parties claiming thereunder no question of right arising under treaty provisions reviewable here, whilst an incomplete title confirmed by this Government is governed by a different rule and disputes as to the title therein between the holders thereof *does* present a case within the treaty reviewable in this Court. The distinction cannot be maintained.

Respectfully submitted.

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